



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,721	07/24/2001	Song Chen	I4303.0116	5513
38881	7590	06/19/2008		
DICKSTEIN SHAPIRO LLP 1177 AVENUE OF THE AMERICAS 6TH AVENUE NEW YORK, NY 10036-2714			EXAMINER LEE, JOHN J	
			ART UNIT 2618	PAPER NUMBER
			MAIL DATE 06/19/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

09/912,721

## Applicant(s)

CHEN ET AL.

## Examiner

JOHN J. LEE

## Art Unit

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No./Mail Date: 12/1/07

***Response to Arguments***

1. Applicant's arguments, see Appeal Brief, filed 4/8/2008, with respect to reconsideration have been fully considered and are persuasive. The finality of previous action has been withdrawn. Prosecution on the merits of this application is reopened.

***Double Patenting***

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claims 1 – 47 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 – 20 of copending Application No. 11/841,604. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.
4. Claims 1 – 47 of this application conflict with claims 1 – 20 of Application No. 11/841,604. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either

cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 1, 13-16, 19, 20, 24, 27, 31, and 42-45** are rejected under 35 U.S.C.

103(a) as being unpatentable over Catthoor et al. (US 6,223,274) in view of Merritt et al. (US Patent number 6,421,429).

Regarding **claims 1 and 31**, Catthoor discloses that a communication system for hosting a plurality of processes (21, 22), each process in said plurality of processes (plurality of processes operating for communication protocol) executed in accordance with a communication protocol, the communication protocol including a set of functions (Fig. 1, 6 and column 10, lines 35 – column 12, lines 21). Catthoor teaches that a plurality of application specific instruction (a plurality of application specific instruction circuit) set processors (ASISPs) (processors in Fig. 6 and column 17, lines 20 - 29), each ASISP (21, 22) capable of executing a subset of said set of functions included in said communication protocol (Fig. 1, 6 and column 10, lines 35 – column 12, lines 21, where teaches the a plurality of application specific instruction circuit set processors operate to individually monitor by IPs with the communication protocol). Catthoor teaches that a

scheduler (column 18, lines 6 - 17) connected to said plurality of ASISPs (coupled to the ASIS processors) for scheduling said plurality of ASISPs in accordance with a time-slicing algorithm (Fig. 16 and column 25, lines 5 – 30, where teaches time slicing for scheduling plurality of ASIPs) so that each process in said plurality of processes is supported by said communication system (Fig. 1, 6 and column 10, lines 35 – column 12, lines 21, where teaches the scheduler coordinates for scheduling a plurality of ASISPs with a time slicing of ASIPs and supporting communication protocol).

However, Cathoor does not specifically disclose the limitation “the wireless communication system has a plurality of processors executed in accordance with a communication protocol”. However, Merritt teaches the limitation “the wireless communication system has a plurality of processors executed in accordance with a communication protocol” (Fig. 2, 3 and column 4, lines 47 – column 5, lines 65, where teaches a communication system (AT&T network or AT&T communication system (wireless or wireline)) has a plurality of processors (27s in Fig. 2) for executing in a accordance with communication protocol). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Cathoor system as taught by Merritt, provide the motivation to achieve enhancing communication signal reliability and adaptability in wireless communication network.

Regarding **claims 13, 14, 42, and 43**, Cathoor and Merritt teach all the limitation, as discussed in claim 1. Furthermore, Cathoor further teaches that communication protocol is selected from the group consisting of IS-95 CDMA, IS-95B CDMA, CDMA TIA IS2000, TIA IS 2000A, wideband CDMA (WCDMA), cdma2000, and ARIB

WCDMA (column 7, lines 3 - column 8, lines 4 and Fig. 1, 6, where teaches matching the communications protocol).

Regarding **claims 15 and 16**, Catthoor and Merritt teach all the limitation, as discussed in claims 1 and 13. Furthermore, Catthoor further teaches that the communication protocol is a time division multiple access protocol (column 7, lines 3 - column 8, lines 4 and Fig. 1, 6, where teaches matching the communications protocol).

Regarding **claims 19 and 44**, Catthoor and Merritt teach all the limitation, as discussed in claims 1 and 13. Furthermore, Catthoor further teaches that each process in said plurality of processes is an echo (Fig. 1, 6 and column 10, lines 35 – column 12, lines 21).

Regarding **claims 20 and 45**, Catthoor and Merritt teach all the limitation, as discussed in claims 1 and 19.

Regarding **claim 24**, Catthoor and Merritt teach all the limitation, as discussed in claim 1.

Regarding **claim 27**, Catthoor and Merritt teach all the limitation, as discussed in claim 1.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Brooks et al. (US 5,842,014) discloses Distributing Processing Among One or More Processors.

Information regarding...Patent Application Information Retrieval (PAIR) system...  
at 866-217-9197 (toll-free)."

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231  
Or P.O. Box 1450  
Alexandria VA 22313

or faxed (571) 273-8300, (for formal communications intended for entry)

Or: (703) 308-6606 (for informal or draft communications, please label  
"PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to USPTO Headquarters,  
Alexandria, VA.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **John J. Lee** whose telephone number is **(571) 272-7880**. He can normally be reached Monday-Thursday and alternate Fridays from 8:30am-5:00 pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, **Nay Maung**, can be reached on **(571) 272-7882**. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-4700.

J.L  
June 17, 2008

John J Lee

/JOHN J LEE/  
Primary Examiner, Art Unit 2618

